

_____ BILL NO. _____

INTRODUCED BY _____

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ALL STATE AND ELECTED OFFICERS TO PROVIDE FINANCIAL DISCLOSURE STATEMENTS; REQUIRING THE STATEMENTS TO BE POSTED ON A WEBSITE; PROVIDING PENALTIES FOR FAILURE TO PROVIDE A FINANCIAL DISCLOSURE; GRANTING THE COMMISSIONER OF POLITICAL PRACTICES THE ABILITY TO ADOPT RULES PROVIDING FOR FINANCIAL DISCLOSURE; AMENDING SECTIONS 2-2-103, 2-2-104, 2-2-105, 2-2-112, 2-2-121, 2-2-131, 2-2-135, 2-2-136, AND 2-16-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, public financial disclosure by government officials is an important tool that allows citizens to keep watch over their government; and

WHEREAS, public financial disclosure helps to bolster trust in government processes and allows citizens the opportunity to hold officials accountable in situations of a possible conflict of interest.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Elected officer" means a statewide elected official, legislator, or public service commissioner.

(2) (a) "Financial disclosure" means, subject to subsection (2)(b), a detailed statement listing all assets, liabilities, property and business interests, complete tax returns, and sources of income of the elected officer or state officer.

(b) To protect the confidentiality of personal information contained in the statement, records that are constitutionally protected from disclosure may be redacted.

(3) "Financial interest" means an interest by an elected officer or state officer that would result in:

(a) monetary gain;

(b) an increase or improvement in the status of stocks, bonds, or loans; or

(c) the potential employment or advancement of employment of the officer, the officer's spouse, a relative within the sixth degree of consanguinity, or the spouse of a relative related within the sixth degree.

(4) "State officer" means an officer of the executive branch of state government as defined in 2-15-102 who is registered as a lobbyist pursuant to Title 5, chapter 7, part 1.

NEW SECTION. Section 2. Financial disclosure -- state officers -- posting -- penalties. (1) (a) Before January 1 of each odd-numbered year, a state officer shall file a written financial disclosure statement with the commissioner of political practices.

(b) The statement must disclose if the officer has a financial interest in legislation proposed during the previous biennium and if the officer stands to enhance or expand a financial interest in the next 2 years because of the legislation.

(2) The disclosure information required pursuant to subsection (1) must be available to the public and posted on the commissioner's website.

(3) Failure to file a disclosure statement pursuant to subsection (1) is a misdemeanor. Upon conviction, a state officer shall be punished by a fine of not less than \$300 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or both. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(4) Subsection (1) is not intended to expand or restrict an individual's right of privacy.

NEW SECTION. Section 3. Financial disclosure -- elected officers -- penalty. (1) (a) Prior to participating in an official action, an elected officer shall verbally make a financial disclosure for the record if the officer has a financial interest in the official action.

(b) In the case of a legislator, the statement must reveal whether the elected officer stands to make a financial gain in the next 2 years because of a proposed action. For the purposes of [sections 1 through 4], "proposed action" includes requesting, amending, making a motion regarding, and voting on legislation.

(2) The disclosure information required pursuant to subsection (1) must be documented in writing, provided to the commissioner of political practices, accessible to the public, and posted on a legislative website and the commissioner's website.

(3) Failure to provide the statement pursuant to subsection (1) results in the elected officer forfeiting the officer's office.

(4) Subsection (1) is not intended to expand or restrict an individual's right of privacy.

1 **NEW SECTION.** **Section 4. Commissioner of political practices -- rulemaking.** Before January 1,
2 2010, the commissioner of political practices shall:

3 (1) establish a standard form for materials required to be filed or documented pursuant to [sections 2
4 and 3]; and

5 (2) adopt rules necessary to implement and enforce [sections 1 through 4].
6

7 **Section 5.** Section 2-2-103, MCA, is amended to read:

8 **"2-2-103. Public trust -- public duty.** (1) The holding of public office or employment is a public trust,
9 created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public
10 employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of
11 the people of the state.

12 (2) A public officer, legislator, or public employee whose conduct departs from the person's public duty
13 is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

14 (3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public
15 duty, and various ethical principles, the transgression of any of which must be avoided.

16 (4) (a) The enforcement of this part for:

17 (i) state officers, legislators, and state employees is provided for in 2-2-136 and [sections 2 and 3];

18 (ii) legislators, involving legislative acts, is provided for in 2-2-135 and [section 3] and for all other acts
19 is provided for in 2-2-136;

20 (iii) local government officers and employees is provided for in 2-2-144.

21 (b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be
22 deposited in the general fund of the unit of government."
23

24 **Section 6.** Section 2-2-104, MCA, is amended to read:

25 **"2-2-104. Rules of conduct for public officers, legislators, and public employees.** (1) Proof of
26 commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A
27 public officer, legislator, or public employee may not:

28 (a) disclose or use confidential information acquired in the course of official duties in order to further
29 substantially the individual's personal economic interests; ~~or~~

30 (b) violate the provisions of [sections 2 and 3]; or

1 ~~(b)~~(c) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

2 (i) that would tend improperly to influence a reasonable person in the person's position to depart from
3 the faithful and impartial discharge of the person's public duties; or

4 (ii) that the person knows or that a reasonable person in that position should know under the
5 circumstances is primarily for the purpose of rewarding the person for official action taken.

6 (2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest
7 substantially lower than the commercial rate then currently prevalent for similar loans and compensation received
8 for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign
9 contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

10 (3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not
11 receive salaries from two separate public employment positions that overlap for the hours being compensated,
12 unless:

13 (i) the public officer, legislator, or public employee reimburses the public entity from which the employee
14 is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent;
15 or

16 (ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the
17 amount of salary received from the other public employer in order to avoid duplicate compensation for the
18 overlapping hours.

19 (b) Subsection (3)(a) does not prohibit:

20 (i) a public officer, legislator, or public employee from receiving income from the use of accrued leave
21 or compensatory time during the period of overlapping employment; or

22 (ii) a public school teacher from receiving payment from a college or university for the supervision of
23 student teachers who are enrolled in a teacher education program at the college or university if the supervision
24 is performed concurrently with the school teacher's duties for a public school district.

25 (c) In order to determine compliance with this subsection (3), a public officer, legislator, or public
26 employee subject to this subsection (3) shall disclose the amounts received from the two separate public
27 employment positions to the commissioner of political practices."
28

29 **Section 7.** Section 2-2-105, MCA, is amended to read:

30 **"2-2-105. Ethical requirements for public officers and public employees.** (1) The requirements in

1 this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty
2 of office or employment in state or local government.

3 (2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest
4 in any business or undertaking that the officer or employee has reason to believe may be directly and
5 substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.
6 The information required in this subsection (2) must be disclosed pursuant to [sections 1 through 4].

7 (3) A public officer or public employee may not, within 12 months following the voluntary termination of
8 office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable
9 to others, of matters with which the officer or employee was directly involved during a term of office or during
10 employment. These matters are rules, other than rules of general application, that the officer or employee actively
11 helped to formulate and applications, claims, or contested cases in the consideration of which the officer or
12 employee was an active participant.

13 (4) When a public employee who is a member of a quasi-judicial board or commission or of a board,
14 commission, or committee with rulemaking authority is required to take official action on a matter as to which the
15 public employee has a conflict created by a personal or private interest that would directly give rise to an
16 appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the
17 public employee shall disclose the interest creating the conflict prior to participating in the official action. The
18 information required by this subsection (4) must be disclosed pursuant to [sections 1 through 4].

19 (5) A public officer or public employee may not perform an official act directly and substantially affecting
20 a business or other undertaking to its economic detriment when the officer or employee has a substantial
21 personal interest in a competing firm or undertaking in accordance with [sections 1 through 4]."

22
23 **Section 8.** Section 2-2-112, MCA, is amended to read:

24 **"2-2-112. Ethical requirements for legislators.** (1) The requirements in this section are intended as
25 rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

26 (2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required
27 in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts
28 to the committee of that house that is assigned the determination of ethical issues. The Except as provided in
29 [section 3], the committee shall advise the legislator as to whether the legislator should disclose the interest prior
30 to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule,

1 vote on an issue on which the legislator has a conflict, after disclosing the interest.

2 (3) When a legislator is required to take official action on a legislative matter as to which the legislator
3 has a conflict created by a personal or private interest that would directly give rise to an appearance of
4 impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator
5 shall disclose the interest creating the conflict prior to participating in the official action, as provided in [section
6 3], subsections (2) and (5) of this section, and the rules of the legislature. ~~in~~ Except as provided in [section 3],
7 in making a decision, the legislator shall consider:

8 (a) whether the conflict impedes the legislator's independence of judgment;

9 (b) the effect of the legislator's participation on public confidence in the integrity of the legislature;

10 (c) whether the legislator's participation is likely to have any significant effect on the disposition of the
11 matter; and

12 (d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family
13 benefit could arise from the legislator's participation.

14 (4) ~~A~~ Except as provided in [section 3], a conflict situation does not arise from legislation or legislative
15 duties affecting the membership of a profession, occupation, or class.

16 (5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature and
17 pursuant to [section 3]. ~~A~~ Except as provided in [section 3], a legislator who is a member of a profession,
18 occupation, or class affected by legislation is not required to disclose an interest unless the class contained in
19 the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. ~~A~~
20 Except as required by [section 3], a legislator may seek a determination from the appropriate committee provided
21 for in 2-2-135."

22
23 **Section 9.** Section 2-2-121, MCA, is amended to read:

24 **"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any
25 act enumerated in subsection (2) is proof that the actor has breached a public duty.

26 (2) A public officer or a public employee may not:

27 (a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the
28 officer's or employee's private business purposes;

29 (b) engage in a substantial financial transaction for the officer's or employee's private business purposes
30 with a person whom the officer or employee inspects or supervises in the course of official duties;

1 (c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other
2 economic benefit from the officer's or employee's agency;

3 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic
4 benefit from any agency;

5 (e) perform an official act directly and substantially affecting to its economic benefit a business or other
6 undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel,
7 consultant, representative, or agent; or

8 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a
9 person whom the officer or employee regulates in the course of official duties without first giving written
10 notification to the officer's or employee's supervisor and department director.

11 (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public
12 time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political
13 committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the
14 use is:

15 (i) authorized by law; or

16 (ii) properly incidental to another activity required or authorized by law, such as the function of an elected
17 public officer, the officer's staff, or the legislative staff in the normal course of duties.

18 (b) As used in this subsection (3), "properly incidental to another activity required or authorized by law"
19 does not include any activities related to solicitation of support for or opposition to the nomination or election of
20 a person to public office or political committees organized to support or oppose a candidate or candidates for
21 public office. With respect to ballot issues, properly incidental activities are restricted to:

22 (i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the
23 impact of passage or failure of a ballot issue on state or local government operations;

24 (ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of
25 law governing public meetings of the local board of trustees, including the resulting dissemination of information
26 by a board of trustees or a school superintendent or a designated employee in a district with no superintendent
27 in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended
28 for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the
29 electors.

30 (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express

1 personal political views.

2 (4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any
3 advertisement or public service announcement in a newspaper, on radio, or on television that contains the
4 candidate's name, picture, or voice except in the case of a state or national emergency and then only if the
5 announcement is reasonably necessary to the candidate's official functions.

6 (5) A public officer or public employee may not participate in a proceeding when an organization, other
7 than an organization or association of local government officials, of which the public officer or public employee
8 is an officer or director is:

9 (a) involved in a proceeding before the employing agency that is within the scope of the public officer's
10 or public employee's job duties; or

11 (b) attempting to influence a local, state, or federal proceeding in which the public officer or public
12 employee represents the state or local government.

13 (6) A public officer or public employee may not engage in any activity, including lobbying, as defined in
14 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of
15 which the public officer or public employee is a member while performing the public officer's or public employee's
16 job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing
17 charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized
18 by law.

19 (7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101
20 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section.
21 The public officer or public employee may not make arrangements for the listing in the electronic directory during
22 work hours.

23 (8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act
24 notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute
25 and if the person complies with the disclosure procedures under 2-2-131 and [section 2].

26 (9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless
27 the member is also a full-time public employee.

28 (10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government
29 from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise
30 enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to

performing the official act."

Section 10. Section 2-2-131, MCA, is amended to read:

"2-2-131. Disclosure. A public officer or public employee shall, in accordance with [section 2] and prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. ~~The~~ Except as required by [section 2], the public officer or public employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. ~~If~~ Except as provided in [section 2], if the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act."

Section 11. Section 2-2-135, MCA, is amended to read:

"2-2-135. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112 and [section 3]. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators."

Section 12. Section 2-2-136, MCA, is amended to read:

"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the

1 subject of the complaint to make an initial determination of whether the complaint states a potential violation of
2 this part.

3 (b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of
4 this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint
5 states a potential violation of this part. If the issues presented in a complaint have been addressed and decided
6 in a prior decision and the commissioner determines that no additional factual development is necessary, the
7 commissioner may issue a summary decision without holding an informal contested case hearing on the
8 complaint.

9 (c) Except as provided in subsection (1)(b) and [sections 1 through 4], if the commissioner determines
10 that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case
11 hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based
12 upon the record established before the commissioner.

13 (2) ~~If Except as provided in [sections 1 through 4], if~~ the commissioner determines that a violation of this
14 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
15 \$1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the
16 employing state agency discipline the employee. The employing entity of a state employee may take disciplinary
17 action against an employee for a violation of this part, regardless of whether the commissioner makes a
18 recommendation for discipline. The commissioner may assess the costs of the proceeding against the person
19 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
20 employee if the commissioner determines that a violation did occur.

21 (3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of
22 this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

23 (4) Except for records made public in the course of a hearing held under subsection (1), records required
24 pursuant to [sections 1 through 4], and records that are open for public inspection pursuant to Montana law, a
25 complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint
26 are confidential documents and are not open for public inspection. The complainant and the person who is the
27 subject of the complaint shall maintain the confidentiality of the complaint and any related documents released
28 to the parties by the commissioner until the commissioner issues a decision. However, the person who is the
29 subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is
30 filed with the commissioner, the complaint and any related documents must be open for public inspection. The

1 commissioner's decision issued after a hearing is a public record open to inspection.

2 (5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm
3 that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects
4 and status of the case.

5 (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
6

7 **Section 13.** Section 2-16-501, MCA, is amended to read:

8 **"2-16-501. Vacancies created.** An office becomes vacant on the happening of any one of the following
9 events before the expiration of the term of the incumbent:

10 (1) the death of the incumbent;

11 (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental
12 disorder and is in need of commitment;

13 (3) resignation of the incumbent;

14 (4) removal of the incumbent from office;

15 (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county,
16 town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's
17 office are required to be discharged;

18 (6) except as provided in 10-1-1008, absence of the incumbent from the state, without the permission
19 of the legislature, beyond the period allowed by law;

20 (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive
21 months, except when prevented by sickness, when absent from the state by permission of the legislature, or as
22 provided in 10-1-1008;

23 (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the
24 incumbent's official duties;

25 (9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time
26 prescribed;

27 (10) the decision of a competent tribunal declaring void the incumbent's election or appointment; or

28 (11) forfeiture of office pursuant to [section 3(3)]."
29

30 NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 4] are intended to be

1 codified as an integral part of Title 2, chapter 2, part 1, and the provisions of Title 2, chapter 2, part 1, apply to
2 [sections 1 through 4].

3

4 NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

5

6 NEW SECTION. **Section 16. Applicability.** [This act] applies to disclosure statements made after the
7 61st legislative session.

8

- END -